

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1029 Educational Facilities/Public Parks
SPONSOR(S): Justice, Gibson A., and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2220

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government & Veterans' Affairs</u>	<u>17 Y, 0 N</u>	<u>Grayson</u>	<u>Cutchins</u>
2) <u>Judiciary</u>	<u></u>	<u>DeJesus</u>	<u>Havlicak</u>
3) <u>Finance & Tax</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill creates s. 1013.101, F.S., to provide that a school board may designate specific areas of school board property, pursuant to an interlocal agreement with a municipality or county, for use as a public park when a school is not in session or when the area is not otherwise being used for after-school activities.

The bill provides that the school board is not liable for injuries to any individual or property occurring as a result of the use of the property as a public park.

This bill appears to have a minimal fiscal impact on state and local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1029b.ju.doc
DATE: March 22, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|----------------------------------------|-----------------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

To the extent that a victim can not recover against a school board for injuries or property damage incurred due to the school board's negligence, it would appear that individual freedom is decreased. However, to the extent that citizens are provided with access to public parks, their individual freedoms appear to increase.

To the extent that school boards are provided with more protection from litigation, it would appear that personal responsibility is decreased.

B. EFFECT OF PROPOSED CHANGES:

EDUCATIONAL FACILITIES

A school board may permit the use of educational facilities and grounds for community use centers, among other approved uses.¹ The board shall adopt rules or policies and procedures necessary to protect educational facilities and grounds when used for such purposes.² Interlocal agreements on the siting of school facilities must include a process for determining where and how joint use of either school board or local government facilities can be shared for mutual benefit and efficiency.³ School boards are encouraged to locate district educational facilities proximate to urban residential areas to the extent possible, to collocate district educational facilities with other public facilities, such as parks, libraries and community centers, to the extent possible, and to encourage using elementary schools as focal points for neighborhoods.⁴

Some districts allow the use of recreation fields and gymnasiums for recreation league use during times when the school is not using those areas.⁵ Currently, there is no specific statutory exemption for a school board from liability when areas are used for such purposes.

This bill creates s. 1013.101, F.S., to authorize a school board to designate areas of school board property, pursuant to an interlocal agreement with a municipality or county, for use as a public park during non-school hours or when the area is not otherwise being used for after-school activities.

¹ See s. 1013.10, F.S., providing that the board may permit the use of the grounds for any legal assembly or for community use centers or may permit the same to be used as voting places in any primary, regular, or special election.

² *Id.*

³ See s. 1013.33(3)(g), F.S.

⁴ See s. 1013.36(1), F.S.

⁵ Phone conversation with Mark Winn, City of St. Petersburg, on March 30, 2004. League use of recreation fields and gymnasiums is usually provided for by an agreement with the school district and the use is supervised by a coach or city staff member.

The bill provides that the school board is not liable for injuries to any individual or property occurring as a result of the use of the property as a public park.

SOVEREIGN IMMUNITY

The State of Florida, its agencies and any of its subdivisions may assert sovereign immunity as a defense to any tort claim brought in state court. District school boards are agencies of the state and are entitled to the same degree of immunity from lawsuit in state courts as the state itself.⁶

However, the state's sovereign immunity may be waived by general law.⁷ In 1973, the Legislature adopted s. 768.28, F.S., effectively waiving sovereign immunity from tort actions for itself, its agencies and its subdivision, including district school boards.⁸ As a result, district school boards may be liable for tort claims to the same extent as private individuals, but they will not be liable for punitive damages or for interest for the period before judgment.⁹

In an action based upon premises liability in which a city police officer fell off of a retaining wall at a middle school, the Second District Court of Appeal held that the School Board's failure to correct or warn of a known dangerous condition was operational negligence, and therefore, it was not shielded by sovereign immunity.¹⁰ The Third District Court of Appeal held that a student, who was shot and injured by an assailant while exiting a school parking lot, was entitled to maintain a cause of action against the school board although the incident took place off school property.¹¹ The court noted that the duty to maintain reasonably safe premises extends to approaches and entrances to the premises.¹²

However, claims or judgments by any one person cannot exceed \$100,000, and multiple claims or judgments arising from the same incident are capped at \$200,000. Further damages may be sought by act of the Legislature.¹³

C. SECTION DIRECTORY:

Section 1. Creates s. 1013.101, F.S., regarding use of school board property for public park purposes.

Section 2. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

⁶ Buck v. McLean, 115 So.2d 764 (1959).

⁷ Article X, Section 13 of the Florida Constitution provides that, "Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating."

⁸ See ch. 73-313, L.O.F.; also see s. 768.28(2), F.S., providing that "state agencies or subdivisions" include the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Florida Space Authority.

⁹ See s. 768.28(5), F.S.

¹⁰ See Green v. School Board of Pasco County, 752 So.2d 700 (Fla. 2d DCA 2000).

¹¹ See Gutierrez v. Dade County School Board, 604 So.2d 852 (Fla. 3d DCA 1992).

¹² *Id.*

¹³ See s. 768.28(5), F.S.

This bill may prevent payment on potential claims and reduce expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill may prevent payment on potential claims and reduce expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may prohibit potential plaintiffs from seeking damages because school boards are no longer liable for injuries to any individual or property occurring as a result of the use of the property as a public park.

The bill benefits municipal or county governments.

D. FISCAL COMMENTS:

This bill appears to have a minimal fiscal impact on state and local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

ACCESS TO COURTS

Art. I, Sec. 21 of the Florida Constitution provides that “[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.” Legislation that cuts off any means of recovery for injured parties has sometimes been found unconstitutional under this provision because it prevents persons from having “redress of any injury” as guaranteed under the Florida Constitution. In the leading case on this issue, *Kluger v. White*, the Florida Supreme Court held that the Legislature may not abolish a statutory right of action that predated the 1968 Florida Constitution¹⁴ or a common law right of action without (1) providing a reasonable alternative to protect the rights of the people of the state to redress for their injuries or (2) showing an overpowering public necessity for the abolishment of the right, where no alternative method of meeting the public necessity can be shown.¹⁵

Tort actions for damages are among the earliest causes of action recognized at common law, and predate the adoption of the 1968 Florida Constitution; however, common law also recognized the sovereign immunity of the state and its subdivisions. Accordingly, no right to sue the *state* existed at

¹⁴ See *Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1973) and *Baillie v. DNR*, 632 So.2d 1114, 1118 (1st DCA Fla. 1994) (confirming that the *White* Court dated its analysis to the 1968 version of the Florida Constitution).

¹⁵ *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

common law, and no such right existed in statute. The Florida Constitution afforded the Legislature the power to waive sovereign immunity from at least 1868 on, but the Florida Legislature did not do so until 1973, when it enacted s. 768.28, F.S.¹⁶ In a case relating to a municipality's negligence that has parallels to the issues presented by this bill, the Florida Supreme Court found that because (1) there was no statutory right to recover for the state's negligence predating the 1968 Constitution and (2) there was no cause of action against the state at common law, the protections of Art. I, Sec. 21 as developed in the *Kluger* case were inapplicable.¹⁷ Because of district school boards' sovereign immunity from lawsuit prior to 1973, a similar analysis with respect to the provisions of this bill prohibiting tort actions on dual-use school/park property will also apply. Accordingly, this bill does not appear to violate the Florida Constitution's access to courts provision.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. Consider replacing "after-school activities" with "school-related activities" to include activities before school, in the summer or on weekends when the school may need to use the property.
2. Consider adding "damage" on line 19 after property for clarity purposes.
3. Potential plaintiffs do not have any source of recovery from their injuries occurring on or due to the use of the designated property according to the language of this bill. The school district itself may be negligent in maintaining the playground equipment. However, the school district is a potential defendant who may be protected by the language of this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

¹⁶ See *Cauley v. Jacksonville*, 403 So.2d 379, 381 (Fla. 1981) (stating that "[c]ommon law sovereign immunity for the state, its agencies, and counties remained in full force until section 768.28's enactment").

¹⁷ *Cauley v. Jacksonville*, 403 So.2d 379, 385 (Fla. 1981).